

REMARKS / ARGUMENTS

In complete response to the Office Action dated October 20, 2009, on the above identified application, reconsideration is respectfully requested. Claims 30-33, 35, 37, 41-44, 46, and 50 are pending in this application.

With this amendment, claim 30 is amended, claims 34, 36, 38-40, 45, and 47-49 are cancelled, and claim 50 is added to further define the invention. The Specification is also amended.

Restriction Requirement

In response to the requirement for restriction, Applicants previously elected subspecies 1b, but erroneously stated that Species I read upon claims 31-35 and 38-49. Applicants withdraw this statement as claims 30 and 36-37 were inadvertently left out of its listing. Applicants also recognize that subspecies 1b does not read upon claims 38-39 and 47-49 in view of other subspecies. Applicants instead assert that subspecies 1b reads upon claims 30-33, 35, 37, 41-44, and 46 and the subject matter of now-canceled claims 34, 36, 40 and 45. Since claim 37 and the subject matter of now-canceled claim 36 do not narrow the types of compound (C₁) recited by claim 30, sub-species 1b also reads upon claim 37 and the subject matter of now-canceled claim 36.

In the Office Action and for the first time, the Examiner now states that claims 36-39 and 47-49 have been withdrawn and has not examined them. In view of the above discussion, it is clear that subspecies 1b reads upon claim 37 and the subject matter of now-canceled claim 36. Thus, Applicants respectfully request the Examiner to please:

- acknowledge the above point in the next Office Action,
- reverse the decision of claims 36-37 being withdrawn, and
- examine each and every of pending claims 30-33, 35, 37, 41-44 and 46.

Double Patenting

Claims 30, 32-35, and 40-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22-35 and 38-39 of co-pending Application No. 11/049,586 (as filed on 02/05/2009). Applicants respectfully traverse because the subject matter of claims 22-35 and 38-39 of co-pending Application No. 11/049,586 has been changed by amendment and the Examiner has not presented a double patenting rejection that recognizes the now-existing scope of those claims. Because it is the Examiner's burden to present a prima facie case and the current rejection does not stand upon a correct recitation of the facts at hand, the rejection should be withdrawn. If the Examiner believes that a double patenting rejection may be made in view of the amended claims in co-pending Application No. 11/049,586, Applicants respectfully request that new findings of fact and a new rejection both be made.

Claim Objections:

Claim 30 is rejected to because of the phrase "from 0.01 to 25 vol%". Applicants thank the Examiner for the suggested amendment and have amended the claim consistent with the suggestion. Thus, the objection may be withdrawn.

Claim Rejection under 35 U.S.C. § 112:

Claims 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to the phrase "the grains of compound (C₂)" of claim 31, Applicant has deleted the word "the". With respect to the phrase "and preferably less than 1 μm", Applicant has deleted the phrase.

Thus, the rejection should be withdrawn.

First Claim Rejection under 35 U.S.C. § 102/103:

Claims 30-31 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 00/59613 (hereinafter referred to as Mackay). Applicants respectfully traverse because Mackay fails to disclose, teach or suggest all of the limitations of the claims as amended, in particular, the types of Compound C₁. Mackay discloses brown-millerite type composites. In contrast, amended claim 30 recites perovskite type – containing composites. Thus, the rejection should be withdrawn.

Second Claim Rejection under 35 U.S.C. § 102/103:

Claims 30-35 and 40-42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Pat. 5,624,542 (hereinafter referred to as Shen). Applicants respectfully traverse because Shen fails to disclose, teach or suggest all of the limitations of the claims as amended, in particular, the types of Compound C₁. While the Examiner points out that Shen discloses perovskite-type compounds, each of these compounds includes Cobalt. In contrast, none of the C₁ compounds includes Cobalt. Thus, the rejection should be withdrawn.

Claim Rejections under 35 U.S.C. § 103:

Claims 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. 5,624,542 (Shen) as applied to the above claims, and further in view of either U.S. Pat. 5,534,471 (hereinafter referred to as Carolan) or U.S. Pat. 6,153,163 (hereinafter referred to as Prasad). Applicants respectfully traverse because Shen fails to disclose, teach or suggest all of the limitations of the claims as explained above and because Carolan and Prasad fail to cure the deficiencies of Shen. Thus, the rejection should be withdrawn.

New Claim 50

Applicants submit that new claim 50 is similarly patentable over the cited art of record.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited. Should the Examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below.

It is believed that no fee is due at this time. If that belief is incorrect, please debit deposit account number 01-1375. Also, the Commissioner is authorized to credit any overpayment to deposit account number 01-1375.

Respectfully submitted,

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